Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119 & 15-191

IN THE

Supreme Court of the United States

SUPREME COURT, U.S.
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EAST TEXAS BAPTIST UNIVERSITY, ET AL., *Petitioners,*
v.
SYLVIA BURWELL, ET AL., *Respondents.*

LITTLE SISTERS OF THE POOR HOME FOR THE AGED, DENVER, COLORADO, ET AL., *Petitioners,*
v.
SYLVIA BURWELL, ET AL., *Respondents.*

SOUTHERN NAZARENE UNIVERSITY, ET AL., *Petitioners,*
v.
SYLVIA BURWELL, ET AL., *Respondents.*

GENEVA COLLEGE, *Petitioner,*
v.
SYLVIA BURWELL, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD, FIFTH, TENTH AND D.C. CIRCUITS

BRIEF OF *AMICI CURIAE* RESIDENTS AND FAMILIES OF RESIDENTS AT HOMES OF THE LITTLE SISTERS OF THE POOR IN SUPPORT OF PETITIONERS

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Dick Staub, *Views: The Dick Staub Interview: Oliver Sacks*, Christianity Today (Jun. 1, 2002), http://www.christianitytoday.com/ct/2002/juneweb-only/6-24-21.0.html 9

INTEREST OF *AMICI CURIAE*[1]

Amici, who are listed and described below, are residents and family members of residents in nursing homes run by the Little Sisters of the Poor. They attest to the unparalleled care that the Sisters provide. The interest of *amici* residents is to protect the home that they treasure so dearly. The interest of *amici* family members is to protect their elderly relatives, or the community where they devotedly volunteer in memory of their deceased loved ones. *Amici* strongly oppose punitive fines on the Sisters who selflessly care for poor, aged residents.

Carl W. Bergquist has lived in one of the Sisters' homes for nine years. He says there is no substitute for their devotion to residents. "This is my third nursing home. ... There were too many deaths at the first nursing home. It was better to stay close to home for the second home but I didn't like it." Few of the nursing home residents can pay for their care, and the Sisters accept whatever they can afford. "The Sisters here are dedicated to helping the poor." He wants to speak for the people who live there. "I'm the president of our floor. This is home to me. ... In the other nursing homes, there was no sense of mission shown. It was just from an operational standpoint, it was almost always cold. ... We don't

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this *amicus* brief. All parties have granted blanket consents on file with the Clerk of Court and noted on the dockets. Further, pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, nor did such counsel or party make a monetary contribution to the preparation or submission of this brief. Only counsel for *amicus*, the Pro-Life Legal Defense Fund, Inc., made such a monetary contribution. All statements made by *amici* are on file with counsel for *amici curiae*.

want to be just written off. Some of the other places there seems to be a lack of identification of who you are. You are just a number." Life with the Sisters is the opposite. "They do everything to make us happy. ... I feel I'm part of the family and that's a great feeling to have. ... That's the beauty of the Little Sisters – they want to make the old people happy and they are dedicated to doing that. They will keep you alive ten years longer than anyplace else because they love you."

Fidelma Talty Dolan is a licensed nursing home administrator with forty years of experience in other nursing homes. She says, "You cannot compare them to the Little Sisters' homes. They are so devoted to the elderly, they give their whole lives to them, and that has not been my experience in the nursing homes I have worked in." She chose the Sisters' home for her 90-year-old mother, who said, "It's like heaven on earth." Ms. Dolan described the reason: "It was not at all institutional, it was so cheerful that you would never think it was a nursing home. The residents are so happy to be there. ... The residents don't have to give up their individuality when they go in there." She looks for relief for the Sisters because "they sacrifice their own lives to care for the elderly. They are so loving, so giving. ... You can't be in that home without being so inspired and you want to help them."

John J. Fitzgerald found a home for his father, a retired fireman, after 24-hour home care became insufficient. As a CPA, he is amazed at the way the "begging Sisters" collect donations of money, food, and other items, almost 60% of their operating budget. His father's life there "was a wonderful, loving and memorable experience because of the Sisters' work. ... My family and I will forever be

grateful to The Little Sisters of the Poor." Therefore he feels that they should be supported in their work.

Carol Hassell has lived with the Sisters for six years. She describes life there as incomparable. "In a nutshell I would say this about the Little Sisters: a little bit of heaven fell from out the sky one day and landed in my apartment." When her children come to see her, the Sisters welcome them like family. "My children are thrilled that I am here. When they visit they can stay in a cottage. I haven't had a bad day here – I just love it. I feel extremely, extremely blessed. The Sisters live out their philosophy in their homes. It's their way of life that is unique. ... Everyone is welcome as one family ... It really is a remarkable place." The Sisters' goal is to fulfill every need and make a real home for residents. "When I moved here, I didn't have a whole lot. Sister Regis, an elderly Sister here, asked if I had furniture and gave me a bunch of beautiful furniture like a couch and a comfortable mattress." She wants the Sisters to be protected. "The Sisters are as real as they come. The world would certainly be a poorer place without them."

Evelyn Hill first met the Sisters as co-workers. "I came here to work after I retired. I am a nurse. I fell in love with it, so I came here to work as a part timer after retiring as a nurse. I found it very friendly and very nice, a wonderful place to work." In her early seventies she was unable to continue working and became a resident. She is not Catholic, but appreciates the Sisters' way of practicing their religion. The residents and staff "kind of got their spirit. It just sort of funneled down from the Sisters. I was able to come to live in one of their apartments and have been very happy." She explains how the Sisters live out their beliefs. "By example you just

see all that they do and the way that they react with the residents, myself included, in their everyday routine. They are always so patient and understanding. ... Every time you need one, they are always smiling. They always have a happy demeanor, a happy smile whatever time you meet them in the hall." Ms. Hill wants her home to be protected because "[y]ou hear so much about mistreatment and horror stories and none of that happens here. I worked for 4 years here part time and have been living here 11-12 years. I am 84 years old. I'm better off than I was when I came here."

Joyce C. Kelly testified that when her father-in-law was at another nursing home he suffered "repeated falls which resulted in his being transported by ambulance to the local emergency room." While he was under the Sisters' care he never fell at all. The difference between the two places was "drastic. ... this place was unique ... The Sisters and staff were so creative, always looking at ways to make the residents happier." They do not ask for payment from their poor residents, and to raise money they "go to local churches and stores and beg for support." She asks the Court to protect them because the HHS mandate "puts their ministry at risk, but they truly believe that God will protect them as they stand up for what they believe is the foundation of their faith."

Richard F. Kelly needed help to care for his father, and chose the Little Sisters' home because "we witnessed their care, kindness, gentleness, and respect. ... They treat the residents like family." He explains what is unique about the Sisters' homes: "It's not just their dedication, it's the style and love in which they do it, the humor, the grace--not only the sisters but the staff too. There's no comparison.

My dad loved it." Since his father's death, Mr. Kelly is still part of the community. "Because of who they are and how they do it, there are a lot of volunteers to come there. ... It's the atmosphere the sisters have created, a special place so people want to help." He asks only to continue their work. "The sisters simply want to be allowed to live their faith."

Gerry McCue met one of the Little Sisters who was "begging at our parish. I was overwhelmed at her description and her invitation to us who are elderly, poor to speak with them." His costs were based entirely on his income, but the Sisters provided for his wants and needs by begging for donations. Living there was unique because of the Sisters' "total devotion to all of us." Thanks to the Sisters' dedication, "there are smiles everywhere. This is not a place for frowns or long faces. These are happy people – this is an entirely different atmosphere than I've seen most places in the world." He wants to stay in this home. "We live with such dignity due to their devoted efforts." If they could not continue their work, he does not believe he could find any adequate replacement. "Overall, there is a different motor inside driving these little Sisters of the Poor."

Joseph Mulholland and Madeleine Diane Adams are a married couple who needed care for their parents. They "searched and searched for a good nursing home. ... [T]he care that the Sisters give is individualized. There is no sense of regimentation or scheduling that everyone has to meet. They focus on the individual – what the elderly person needs. They try to bring out the best in them. The Sisters see them as individuals with individual gifts. The residents feel a part of life at the home." They found no nursing home that could

compare to it. "The individualized care was unique." The Sisters are motivated by their beliefs in a quiet way. "The religion is there for you to take part in but they don't push it on you at all. They are amazingly open-minded in that sense. They have a strong focus on human dignity and they wouldn't dream of imposing themselves on someone or forcing someone to believe. They leave it up to the individual." Although their parents have passed away, Ms. Adams and Mr. Mulholland still make several trips every week to give back to the community. They are not alone in this lifelong relationship. "The families stay connected to the home even after loved ones pass away – you will see them as volunteers, running craft fairs, etc. The Sisters see it as 'a way our family grows.' We wouldn't think about not keeping them as a part of our daily lives."

Joseph B. Schirring kept his mother at home until she needed a higher level of support. He realized that "we gave her more love than good care, but the Sisters gave her love and professional care. They're working 24/7, 365 days a year, no vacations. Some of them have been there fifty years. ... They are unsung heroes, they accept a calling and dedicate their lives ... The service that the Little Sisters provide is irreplaceable because "[t]he quality of life is significantly better than other places. They are devoted to a very tangible mission, to make them as comfortable as they can in their final years." He still visits the home to support the Sisters, and looks for protection of their right to exercise their religious beliefs.

Fr. William Spacek needed a compassionate home for his 90-year-old mother after she had been neglected and abused at several nursing homes. She suffers from dementia but thrived under the Sisters'

care. "[H]er face looks so different now. She used to have a lot of tension and anxiety in her face; now she seems to feel secure. ... It's because the Sisters treat her with respect and care." She was not expected to pay any more than she could afford. He sees the Sisters teaching by example: "By the very fact that they have opened their home, by their very activity, they instruct people who think that old people have no value." He seeks appreciation for them rather than punishment.

Nina Veselits lives with the Sisters. "They have been so wonderful to me. ... I couldn't even imagine being anyplace but here. They have been so good to me. I love the Sisters here. They all welcomed me with open arms and they didn't even know who I was. I've never met anybody like them. They are so kind and giving of their whole heart. It's a wonderful home here." She feels that they are irreplaceable. "If it wouldn't be for people like the Little Sisters of the Poor and Catholic Charities, my life wouldn't be the same. It's really a marvelous place no matter what religion you are. You don't have to be Catholic to be in here." She wants the Little Sisters to be allowed to continue as they are.

SUMMARY OF THE ARGUMENT

For almost 150 years, the Little Sisters of the Poor in the United States have provided an incomparable loving environment for elderly poor people, many of whom have nowhere else to go. The Little Sisters' religious beliefs inspire them to give up their lives for this work, but they don't force their religion on others; they provide this irreplaceable service regardless of religious affiliation, condition of dependency, or ability to pay. Now the Little Sisters are being told by the federal government that if some

employee wants free contraceptives, they must facilitate--in violation of their religiously informed consciences--or face huge fines that would endanger their ability to carry out their mission of mercy. Because of their overwhelmingly positive experiences at homes of Little Sisters of the Poor, *amici* residents and their families want to support in the strongest way possible the continuation of the Little Sisters' invaluable work.

ARGUMENT

I. THE LITTLE SISTERS' FAITHFUL EXERCISE OF THEIR RELIGION HAS PROVIDED AID AND INSPIRATION TO THE POOR ELDERLY, REGARDLESS OF FAITH AFFILIATION, SINCE 1839.

The Little Sisters of the Poor began in the winter of 1839 in Brittany, France when a woman in her 40s, now Saint(ed) Jeanne Jugan, met an elderly blind and partially paralyzed woman and gave up her bed for her.[2] This act began a tradition that has lasted for generations as Jugan continued to take in elderly poor people who had no one to help them. The English novelist Charles Dickens saw her at work, writing later that Jugan was "moved by the gentleness of her heart" to help her first resident. "Other infirm people earned, by their helplessness, a claim on her attention," Dickens recounted. "She went about begging, when she could not work, that

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[2] Paul Milcent, *Jeanne Jugan: Humble So as to Love More*, 40 (Darton, Longman & Todd, 2d ed., 2000).

she might preserve life as long as Nature would grant it to her infirm charges."[3]

Other women were attracted by Jugan's example, and a religious community to help the elderly sprang up. The Little Sisters of the Poor, as the congregation became known, grew, and spread to other places where they found need—including, in 1868, the United States.

From the beginning the Little Sisters have been about not just what they do but how they do it. The Little Sisters do not treat the people they care for as clients, but rather as friends and family. They see themselves not as proprietors or even caregivers, but as joyful servants. They seek neither money nor acclaim. As Dickens noted, "The whole sentiment of the household is that of a very large and very amiable family. To feel that they console the last days of the infirm and aged poor, is all the Little Sisters get for their hard work."[4]

This spirit of joyful and selfless service to the aged poor has changed little since Dickens's time. Writer and neurologist Oliver Sacks, who jokingly described himself as an "old Jewish atheist,"[5] wrote just before his death in his 2015 memoir: "[T]he Little Sisters inspire me, and I love going to their

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[3] Charles Dickens, *The Little Sisters*, Household Words, Feb. 14, 1852 *available at Dickens Journals Online*, http://www.djo.org.uk/household-words/volume-iv/.

[4] *Id.*

[5] Dick Staub, *Views: The Dick Staub Interview: Oliver Sacks*, Christianity Today (Jun. 1, 2002), http://www.christianitytoday.com/ct/2002/juneweb-only/6-24-21.0.html.

residences. I have been going to some of them, now, for more than forty years."[6]

Sacks came to know of the Sisters through his parents, who were doctors. "I first heard of the Little Sisters when I was a boy, for both my parents consulted at their homes in London. ... Auntie Len would always say, 'If I get a stroke, Oliver, or get disabled, get me to the Little Sisters: they have the best care in the world,'" Sacks recalled.[7]

As an adult Sacks provided his expertise in neurology for the Little Sisters. He got to know them well:

> Their homes are about life — living the fullest, most meaningful life possible given their residents' limitations and needs. Some of the residents have had strokes, some have dementia or parkinsonism, some have 'medical' conditions (cancer, emphysema, heart disease, etc.), some are blind, some are deaf, and others, though in robust health, have become lonely and isolated and long for the human warmth and contact of a community.
>
> Besides medical care, the Little Sisters provide therapy of every kind — physical therapy, occupational therapy, speech therapy, music therapy, and (if need be) psychotherapy and counseling. In addition to therapy (though no less therapeutic) are activities of all sorts,

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[6] Oliver Sacks, *On the Move: A Life* 225 (Alfred A. Knopf, 2015).

[7] *Id.* at 224.

> activities which are not invented but real like gardening and cooking.[8]

While Sacks did not share the Little Sisters' religious beliefs, he understood that the Little Sisters of the Poor is a Roman Catholic religious congregation, and that the Sisters are animated by their Catholic faith to do what they do. "Religion is central but not mandatory; there is no preachiness, no evangelism, no religious pressure of any sort," Sacks wrote. "Not all the residents are believers, though there is a great religious devotion among the Sisters, and it is difficult to imagine such a level of care without such a deep dedication."[9] In short, the Little Sisters' care for poor residents of their houses is an exercise of their religion, which also serves people of all religions and no religion.

II. THE LITTLE SISTERS PROVIDE A UNIQUE AND IRREPLACEABLE SERVICE THAT IS CHERISHED BY RESIDENTS AND FAMILIES OF RESIDENTS.

Observers of the Little Sisters have recently come forward to describe their experiences with these nuns. Several have offered comments as *amici* for this brief to aid in understanding the holistic exercise of religion in the work of the Little Sisters. They are concerned about what would happen to the Sisters' irreplaceable service to the poor aged should the government succeed in its plan to force the Little Sisters to compromise their beliefs or pay massive fines. *See Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) (citing *Amici Curiae* for experiences of those affected by decision); *Roper v. Simmons*, 543 U.S.

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[8] *Id.*

[9] *Id.* at 224-5.

551, 569, 578 (2005) (citing several *Amici Curiae* for understanding of factors and effects of juvenile death penalty). *Amici* are residents of the homes the Little Sisters run and family members of residents and former residents.

Amicus John Fitzgerald cared for his father, a retired fireman, at home round the clock every day before his father moved to one of the Little Sisters' homes. He described their initial visit: "When you enter a Little Sisters' residence you stop at the door because you feel the floor is wet, afraid to slip, but it's not. It is washed and polished daily. The next thing you notice is the fragrance of fresh flowers, soft lighting, you see religious statues and feel the warmth of the busy Sisters lovingly doing their work."

Amicus Carol Hassell was surprised by the smell of the Little Sisters home --- or rather, the lack of smell. "Their homes are absolutely spotless. You won't find the odors there like other houses. They toilet their people every two hours. Other homes could do that but don't. Everyone is welcome as one family."

III. THE LITTLE SISTERS' DEVOTED CARE FOR POOR RESIDENTS IS AN EXERCISE OF THEIR RELIGION THAT ENHANCES THE SERVICES PROVIDED TO THE POOR AND ELDERLY.

Like members of most other Catholic religious congregations, the Little Sisters take vows of poverty, chastity, and obedience. But the Little Sisters also take a special fourth vow: hospitality. Residents and their family members notice.

When *amicus* Father William Spacek brought his mother to the Sisters, they took an immediate, personal interest in her. "The first thing Sister Lourdes said to me was, 'Tell me everything that's going on.' When she moved in, a postulant sewed name tags into all of her clothes."

Amici Madeleine Diane Adams and Joseph Mulholland, a married couple whose aging parents needed care some years ago, searched nursing homes for a long time before they settled on the Little Sisters. What set the Little Sisters apart for them was how much the Sisters care and how individualized the care is. Adams and Mulholland said in a joint statement: "There is no sense of regimentation or scheduling that everyone has to meet. They focus on the individual—what the elderly person needs. They try to bring out the best in them. The Sisters see them as individuals with individual gifts. The residents feel a part of life at the home."

Amicus Carl W Bergquist spent time living in two other nursing homes before he moved to a Little Sisters' home. "There were too many deaths at the first nursing home. It was better to stay close to home for the second home but I didn't like it. A friend told a family member about the Little Sisters. It didn't cost anything. In the other nursing homes, there was no sense of mission shown. It was just from an operational standpoint, it was almost always cold. Around here you get to know the people. ... Some of the other places there seems to be a lack of identification of who you are. You are just a number."

Mr. Bergquist attributes his current good spirits not just to the medical care he receives from

the Little Sisters, but also the joy they spread: "Each floor has a Christmas party. The Little Sisters get us gifts. They give it a family touch. There's no reason to be depressed in a place like this unless you want to be. They do everything to make us happy. We had a contest between the nuns and the residents and the workers—*Jeopardy*. I feel I'm part of the family and that's a great feeling to have. ... That's the beauty of the Little Sisters—they want to make the old people happy and they are dedicated to doing that. ... They will keep you alive ten years longer than anyplace else because they love you."

The Sisters' philosophy is to keep families connected when residents have family. *Amicus* Carol Hassell, a resident of a Little Sisters home, said she does not feel alienated from her family just because she has moved to a nursing home. "My children are thrilled that I am here. When they visit they can stay in a cottage. I haven't had a bad day here --- I just love it. I feel extremely, extremely blessed."

Amicus Fidelma Dolan evaluates a Little Sisters' home as an expert. "I'm a licensed nursing home administrator and I worked in other nursing homes for over 40 years. You cannot compare them to the Little Sisters' homes. They are so devoted to the elderly, they give their whole lives to them, and that has not been my experience in the nursing homes I have worked in," she said. "So many little things show their care. Many of the residents are poor and don't have anything. They will go and provide them with clothing that is individually chosen for the person, and they sew name labels into the clothing. At Christmas they will select an individual present for each person rather than everyone getting socks; that has been my experience in other nursing homes."

Ms. Dolan got to know the Little Sisters when her mother went to live with them. "My mother was 90 when she went into their Jeanne Jugan Home. She lived there for four years and she would say, 'It's like heaven on earth.' It really is a family." *Amicus* Nina Veselits described how the sisters contribute to that feeling from the very beginning: "They all welcomed me with open arms and they didn't even know who I was. I've never met anybody like them."

IV. THE LITTLE SISTERS AUTHENTICALLY SERVE EVERY PERSON AS AN INDIVIDUAL WITHOUT REGARD TO FAITH, FINANCES, OR FRAILTY.

Many nursing home residents in the United States complain about feeling not only neglected but dehumanized. That's not the case for *amicus* Gerry McCue, who lives at a Little Sisters' home. "Dignity is our hallmark word," McCue said. We live with such dignity due to their devoted efforts."

Many of the residents of Little Sisters homes can't offer testimony in this brief because they aren't well enough. But they are cherished by the Little Sisters regardless of their physical or mental disabilities. The Little Sisters' level of care has a noticeable effect even on some residents whose illnesses are advanced.

Father Spacek described the difference he has seen in the Sisters' care and the good it has done: "My mother has dementia. She was neglected and abused at several nursing homes ... [The Sisters] take their time, they're concerned, they talk to her. She used to be neglected for hours. Now if I push the button they are here within 5 minutes. They got her to sing a Christmas carol yesterday ... She is

responding so well. Because of her glaucoma she couldn't find food on her plate; the Sisters taught her how to feed herself again. People who visit her say that her face looks so different now. She used to have a lot of tension and anxiety in her face; now she seems to feel secure. She used to keep one eye closed all the time and now it's usually open. It's because the Sisters treat her with respect and care."

The physical improvement stems in part from a commitment to service as the Little Sisters live out their faith to all in the homes. *Amicus* Richard Kelly's late father, Frank Kelly, moved to a Little Sisters' home after being treated at another nursing home for 10 years. At the other place Mr. Kelly kept falling and had to be taken to a hospital repeatedly. The problem was that Mr. Kelly suffered from dizziness but kept wanting to get up out of his wheelchair and repeatedly fell. When family members asked the staff to watch him more closely, they didn't seem to care.

Things changed when Mr. Kelly moved to the Little Sisters' home, as his son recounted: "Whenever he got up they rushed in; they were so careful, so patient with him and he never fell, never." Richard's wife, *amicus* Joyce Kelly, said the improvement in Mr. Kelly's outlook started immediately: "When they asked him what he thought about the home, he said, 'Sister, when Richard wheeled me into the building I thought I died and went to heaven.'"

It wasn't just the medical care. As Joyce Kelly recalled: "My father-in-law loved dogs and one of the nurses brought in her two little dogs every week which made him very happy. Frank loved to sing and they would bring him to the rooms of people who

could not always get around and have him sing to them, which was a catharsis. He would also sing to every woman who came into his room, 'You must have been a beautiful baby,' with gusto. There was one woman who wouldn't come out of her room so they brought him to sing to her and it really cheered her up, as well as Frank."

When Mr. Kelly was agitated, the sisters would calm him, his son recalled: "My father would have dreams that I was dead and they would call me up to reassure him rather than just let him sit in his misery. ... If anyone was worried about him, whether it was one of the sisters or a social worker, they would call me to let me know. When dad was having flashbacks to his military days, they got him anything military, like a blanket with a flag. He was always cold because of his poor circulation, so he would have up to four blankets. They made sure he had on warm clothes. They would listen to his stories about his wife over and over, even when he was confused. For his 96th and last birthday there they opened the ice cream parlor to us and gave us all the food for 15-20 people, and there was no charge. They made sure he had chocolate ice cream twice a day. They treat the residents like family, especially important when there is no family that visits. From the day my father went in till his last days on earth, it was very comforting to me that he was there."

V. THE LITTLE SISTERS OFFER A JOYFUL, SUPPORTIVE, AND PEACEFUL ENVIRONMENT, FROM THE DETAILS OF DAILY LIVING TO THE FINAL MOMENTS OF LIFE.

One of the things that impressed Mr. Kelly's son was how happy the sisters seemed and how they tried to spread that happiness to others. "It's not just their dedication" he said, "it's the style and love in which they do it, the humor, the grace --- not only the Sisters but the staff too. ... Watching the dining room staff when someone had difficulty eating was just incredible: one of the nuns or staff would sit with them and feed them. One nun would be on her knees to feed a woman because the bed was too low to do it from a chair. On each visit we witnessed their care, kindness, gentleness, and respect. You saw the respect in the way the place was maintained. The Sisters simply want to live their faith and they do."

Amicus Evelyn Hill started with the Little Sisters as a nurse and eventually became a resident of one of their homes. She knows how many Americans view nursing homes, and she understands why. But she didn't come to the Little Sisters' home just to decline and die. In fact, the opposite has happened. "You hear so much about mistreatment and horror stories and none of that happens here. I worked for 4 years here part time and have been living here 11-12 years. I am 84 years old. I'm better off than I was when I came here."

For some of their residents, the Little Sisters cannot help improve their physical health. But they can still be there for them. The Little Sisters

emphasize offering spiritual comfort for residents in their last hours.

As resident Carol Hassell said, "The Sisters live out their philosophy in their homes. It's their way of life that is unique. It's the way of life of a nun that makes a difference. It's totally different. It's the fourth vow of hospitality. They do it better than anyone. The ultimate of the Little Sisters is to sit with the dying. They sit with them around the clock. No one dies alone here. Those night hours like 1:00-2:00 or 2:00-4:00, the sisters are with them."

Resident Gerry McCue has seen the Little Sisters tend to the dying, too. "Recently, a woman died and the Sisters were there at the hospital all night, praying beside her bed. I pray for that, that type of help on my deathbed. That they would be there encouraging me not to fear, to look into the presence of God."

The Sisters do not do their work alone. They have staff employees who assist them. Family members note how careful the Sisters are in their staff selections.

Joyce Kelly, daughter-in-law of former resident Frank Kelly, was impressed by the staff. "Whenever we watched the staff interact with Mr. Kelly you could see the respect, kindness and dedicated concern they showed. Watching future interactions with the staff only convinced us that this place was unique, with well trained staff who really liked working alongside with the Little Sisters."

Mrs. Kelly noted that the Little Sisters inspired loyalty and even devotion among their lay employees. "One director on Mr. Kelly's floor was

there because she knew the quality care the clients received and that was her professional expectation for all on her caseload. Prior to coming to this facility she was the director of nursing at a local hospital, making much more money. But she said the money was only part of the job and she wanted to know that where she worked she knew her philosophy for patient care was what was being offered. She also said the staff at this facility wanted to come to work every day and loved their jobs."

VI. THE LITTLE SISTERS FAITHFULLY SERVE PEOPLE OF ALL RELIGIONS.

Madeleine Diane Adams and Joseph Mulholland said the Little Sisters do not hide their Catholic identity but they don't force it on others, either: The religion is there for you to take part in but they don't push it on you at all. They are amazingly open-minded in that sense. They have a strong focus on human dignity and they wouldn't dream of imposing themselves on someone or forcing someone to believe. They leave it up to the individual."

Evelyn Hill came to work at a Little Sisters' home as a non-Catholic, and felt comfortable moving into the home in her retirement years. "I found it very friendly and very nice, a wonderful place to work. The Sisters were wonderful. It seemed that everyone in the house were kind of under their linen and kind of got their spirit. It just sort of funneled down from the Sisters. I was able to come to live in one of their apartments and have been very happy. By example you just see all that they do and the way that they react with the residents, myself included, in their everyday routine. They are always so patient

and understanding. They are wonderful people... In a nutshell I would say this about the Little Sisters: a little bit of heaven fell from out the sky one day and landed in my apartment."

VII. THE LITTLE SISTERS SERVE PEOPLE WITHOUT REGARD TO THEIR ABILITY TO PAY.

Most of the residents are too poor to pay for their care, yet the Sisters provide everything possible to make them comfortable, far above and beyond the basic care at any nursing home. So how do the Little Sisters pay the cost? By begging. *Amicus* John Fitzgerald relates: "[T]he Little Sisters travel from church to church in the diocese, briefly speak of their work, then stand at the back of the church after Mass with collection baskets. The Sisters also raffle off holiday themed baskets during the course of the year. The baskets and other raffled items are donated, as well as the many varied items the small gift shop offers." Their begging not only provides essential financial assistance to allow them to continue their high-quality care, but provides an opportunity to spread the message about their homes of hope to the elderly poor. Mr. McCue recounts that he first learned about the Little Sisters of the Poor when a Sister was begging at his parish. He said he "was overwhelmed at her description and her invitation to us who are elderly, poor, to speak with them." Since accepting that invitation and coming to live at a Little Sisters' home, he has been amazed at the "total devotion" the Sisters have shown to him and the other residents. He describes the ambience of the home:

> an entirely different atmosphere than I've seen most places in the world.

> These people, these human beings, have had a calling to doing the work of the gospel, and something that has integrity and acts of generosity. They are following the Bible call from Jesus himself. Such a startling thing when you see that attitude. You think, how long can this last? But it does. Overall, there is a different motor inside driving these Little Sisters of the Poor.

CONCLUSION

The same religious spirit of charity that animates the Little Sisters' service to poor elderly people also animates their desire not to arrange coverage for artificial contraception to their employees. The Little Sisters believe that artificial contraception is immoral. The Little Sisters also believe that it is immoral to do a bad thing in order to do a good thing. So they can't justify facilitating artificial contraception in order to continue serving the poor people who need their help. That means that the homes that the Little Sisters operate that so many residents and family members find indispensable are in jeopardy.

Under the system currently envisioned by the executive branch of the federal government, the Little Sisters would face a choice: violate your conscience and continue serving the poor; stick to your conscience and stay open while paying huge, potentially ruinous fines; or close your doors.

The Little Sisters do not intend to violate their consciences. They do not have unlimited funds to pay massive fines to Big Brother. Their outlook, therefore, is bleak.

This Court has the opportunity in this case to see that, at least this once, good deeds go unpunished. The decision of the lower courts should be reversed.

Respectfully submitted,

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